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CITATIONS

Case:

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Statutes:

Portal-to-Portal Act of 1947:
Section 6 3

Walsh-Healey Public Contracts Act, 41 U.S.C. 35, *et seq.*:
Section 5 2

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 294

UNITED STATES OF AMERICA, PETITIONER

v.

LOVKNIT MANUFACTURING COMPANY, INC., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above case on June 1, 1951.

OPINIONS BELOW

The opinion of the district court (S.R. 6)[1] is reported at 90 F. Supp. 679. The opinion of the court of appeals (S.R. 22) is reported at 189 F. 2d 454.

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[1] "S.R." refers to the volume of the record entitled "Supplemental Transcript of Record".

JURISDICTION

The judgment of the court of appeals was entered on June 1, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED[2]

1. Whether the two-year statute of limitations provided in Section 6 of the Portal-to-Portal Act of 1947 is applicable to actions by the United States under the Walsh-Healey Public Contracts Act.

2. Whether, if applicable to an action by the United States based on an administrative determination of liquidated damages, the statute of limitations begins to run before the administrative determination has been made.

STATUTES INVOLVED

The pertinent provisions of the Portal-to-Portal Act and the Walsh-Healey Public Contracts Act are set forth in the Appendix to the petition for a writ of certiorari filed in *United States* v. *Lance,* No. 293.

STATEMENT

This is an action by the United States under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35 *et seq.* to recover $6,796.90 as liquidated damages administratively found to be owing the United States after hearings in the Department of Labor under Section 5 of the Act (R. 7-11). At the conclusion of those hearings, the contractor was found

[2] The questions are identical with those presented by the petition filed concurrently herewith in *United States* v. *Lance,* No. 293.

to have violated the child labor and overtime requirements of the Act in the performance of twelve contracts with the United States (R. 21-22).

The contracts were performed during the period from April 1942 to December 1945 (R. 30, 53-54) and the violations were discovered by inspections made in 1946 (R. 52). Administrative proceedings were commenced under Section 5 of the Act by the filing of a complaint on January 27, 1947 (R. 27). A trial examiner held a hearing on March 20-21, 1947 (R. 29), and issued his report on December 29, 1947 (R. 42). The trial examiner's report was reviewed by the Administrator of the Public Contracts Division, whose decision became final on March 21, 1949 (R. 21, 26, 9-10).

The contractors refused to pay the sum found due by the Administrator, and the present suit, based on the administrative decision, was commenced on December 28, 1949 (R. 7). In addition to the necessary jurisdictional averments, the complaint alleged only the administrative proceedings as the basis for the cause of action and demanded judgment for the amount found owing in that proceeding (R. 7-11). The Government moved for summary judgment, annexing to its motion a copy of the administrative proceedings (R. 19). After trial, the district court directed the entry of a judgment denying relief (R. 81, S.R. 3-6), on the grounds that the suit was barred by the two-year limitations period fixed by Section 6 of the Portal-to-Portal Act, and that the administrative finding

that the contractors had knowingly employed under-age minors was not supported by the preponderance of the evidence (S.R. 3-10).[3]

The court of appeals concluded "it is necessary to consider only the question of bar by limitation" (S.R. 23). It held that the statute of limitations, though not mentioning the Government, nevertheless applied to actions by the United States under the Walsh-Healey Act. It held further that the Government's cause of action accrues and that the statute of limitations begins to run from the date of the violations rather than the administrative determination. Accordingly, the action was held barred although filed within two years of the administrative decision.

REASONS FOR GRANTING THE WRIT

The questions presented by this petition are identical with those presented by the petition in *United States* v. *Lance, Incorporated,* No. 293, filed concurrently herewith. The considerations calling for review by this Court are fully presented in that petition.

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[3] Violations of the overtime requirements of the Act were established at the administrative hearings by undisputed evidence, but the district court made no reference to the administrative findings on these violations in dismissing the Government's complaint. The administrative findings with respect to child labor violations were also based upon undisputed documentary evidence, except as to one of the five under-age minors involved. In the event the writ of certiorari is granted on the statute of limitations issue, the Court may also wish to consider the proper scope of judicial review of factual findings made in the administrative proceedings.

CONCLUSION

It is respectfully submitted that, for the reasons set forth in the petition in *United States* v. *Lance,* this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

AUGUST, 1951.

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